

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3427 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HASMUKHBHAI K THAKAR

Versus

GUJ. AGRI. UNIVERSITY & ANR.

Appearance:

MR JM PATEL for Petitioner

MR JR NANAVATI for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 30/08/96

ORAL JUDGMENT

Heard learned counsel for the parties. The petitioner, an office superintendent, in the Gujarat Agricultural University, filed this petition challenging thereunder the order of the respondent dated 14.7.83, under which he was ordered to be reverted back to the post of Head Clerk.

2. It is not in dispute that the petitioner has been

given promotion under the order dated 4.6.83 on the post of office superintendent after he was adjudged suitable for promotion by the Departmental Promotion Committee meaning thereby it was a regular promotion which has been given to the petitioner under the aforesaid order. Under the order annexure 'B', reversion has been made on the ground that some criminal case is pending against the petitioner. This order of reversion has been stayed by this Court on 8.8.83 and the petitioner is working on the post of Office Superintendent for all these years. Shri J.T. Nanavati, learned counsel for the respondents conceded that the criminal case is still pending. He further conceded that there is no provision under any statute or ordinance or any regulation framed by the Gujarat Agricultural University under which an employee is disqualified from promotion against whom criminal case is pending for investigation. The learned counsel for the respondents is unable to justify the order of reversion of the petitioner. Merely because a criminal case is pending against an employee, he cannot be disqualified for promotion. His case for promotion has to be considered which is a fundamental right. The matter would have been different that the University had framed some Rules to put the result of Departmental Promotion Committee of such person in a sealed cover, but unless such rule, regulation or resolution is there, merely on the ground of pendency of criminal case, the petitioner could not have been reverted. More so, when it is a case of regular promotion. It is true that the respondent may not have knowledge of pendency of criminal case on the day on which the petitioner was promoted, but unless by some statute or rule or regulation or resolution, pendency of criminal case is made disqualification, the petitioner could not have been reverted. The net result of aforesaid discussion is that the impugned order dated 14th July 1983 of the respondent reverting the petitioner from the post of Office Superintendent to that of Head Clerk cannot be allowed to stand.

3. In the result, this Special Civil Application succeeds and the same is allowed. The order dated 14th July 1983, annexure 'B' of the respondent is quashed and set aside. However, it is made clear that in case ultimately the petitioner is convicted in the criminal case pending against him, the respondents shall be at liberty to pass appropriate order against him. Rule is made absolute subject to aforesaid observations. No order as to costs.

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(sunil)